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8 Attorneys for Defendant
APPLE INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

14 ZOMM, INC.,

15 Plaintiff,

16 v.

17 APPLE INC.,

18 Defendant.

Case No. 4:18-cv-04969-HSG

**STIPULATED REQUEST AND
[PROPOSED] ORDER TO DISMISS
PLAINTIFF'S NON-PATENT CAUSE
OF ACTION**

Judge: Haywood S. Gilliam, Jr.

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2 Pursuant to Civil Local Rule 7-12, Plaintiff Zomm, Inc. (“Zomm”) and Defendant Apple
3 Inc. (“Apple”), by and through their undersigned counsel and subject to the Court’s approval,
4 hereby submit this stipulated request to dismiss with prejudice Zomm’s cause of action for breach
5 of contract.
6

7 WHEREAS, Zomm filed a Second Amended Complaint on July 17, 2019 (Dkt. No. 84);

8 WHEREAS, Apple filed its Motion to Dismiss Zomm’s Non-Patent Cause of Action on
9 August 21, 2019, and noticed the motion for hearing on January 23, 2020 (Dkt. No. 88);

10 WHEREAS, counsel for both parties conferred about Zomm’s cause of action for breach of
11 contract; and

12 WHEREAS, the parties agreed to dismiss with prejudice Zomm’s cause of action for breach
13 of contract.
14

15 It is hereby STIPULATED AND AGREED, by and between the parties, subject to the
16 approval of the Court, as follows:

17 1. The Second Cause of Action (Breach of Contract) in Zomm’s Second Amended
18 Complaint (Dkt. No. 84) is dismissed with prejudice; and

19 2. Each party shall bear its own costs, expenses, and attorneys’ fees associated with
20 the claim dismissed by this Stipulated Dismissal.
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1 IT IS SO STIPULATED.

2 Dated: September 23, 2019

KELLEY DRYE AND WARREN LLP

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4 By: /s/ Michael J. Zinna

5 Michael J. Zinna
6 Attorneys for Plaintiff
ZOMM, INC.

7 Dated: September 23, 2019

O'MELVENY & MYERS LLP

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9 By: /s/ David R. Eberhart

10 David R. Eberhart
11 Attorneys for Defendant
APPLE INC.

12
13 **FILER'S ATTESTATION**

14 Pursuant to Local Rule 5-1(i)(3), I hereby attest that the other signatory listed, on whose
15 behalf the filing is submitted, concurs in the filing's content and has authorized the filing.

16 /s/ David R. Eberhart

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: September ____, 2019

Haywood S. Gilliam, Jr.
United States District Court Judge